

**SYNOPSIS OF THE ONE CRIMINAL OPINION IN THE MISSISSIPPI SUPREME
COURT HANDED DOWN MAY 6, 2010**

Long v. State, No. 2008-KA-01877-SCT (Miss. May 6, 2010)

CRIME: Possession of Cocaine with intent to sell and Sale of Cocaine

SENTENCE: Consecutive life sentences as an habitual offender

COURT: Grenada County Circuit Court

TRIAL JUDGE: Hon. C. E. Morgan, Iii

APPELLANT ATTORNEY: Ross R. Barnett, Jr., James T. Mccafferty, III

APPELLEE ATTORNEY: Jeffrey A. Klingfuss

DISTRICT ATTORNEY: Doug Evans

DISPOSITION: Affirmed. Graves, Presiding Justice, for the Court: Waller, C.J., Lamar, Kitchens and Pierce, JJ., Concur. Randolph, J., Concurs in Part and in Result with Separate Opinion Joined by Carlson, P.J., Dickinson and Chandler, JJ.

ISSUES: (1) Whether the verdict was against the overwhelming weight of the evidence, (2) Whether the trial court erred in admitting evidence of prior bad acts, (3) Whether black potential jurors were systematically and unconstitutionally struck from the jury, and (4) Whether the sentence violated Long's constitutional rights

FACTS: On March 4, 2008, a CI, Wesley Rogers, made a drug buy from Charlie Demeko Long for the Grenada PD. Rogers and his vehicle were searched and outfitted with A/V equipment prior to the buy. Rogers telephoned Long and arranged the purchase of \$80 worth of cocaine. The pair agreed to meet at Spain's Supermarket. Rogers got into a white Toyota Camry owned by Lakendal Barnes, Long's girlfriend. The video shows Rogers handing someone in the Camry the \$80 and the person handing Rogers 0.7 grams of crack cocaine. Although the face of the person in the car could not be seen on the video, Rogers testified it was Long. The recording showed that the seller was wearing a gold watch and ring, and that there was a yellow key chain on the keys in the ignition, and a cell phone in his lap. Officers removed similar items from Long upon his arrest. On March 18, 2008, Barnes was driving the Camry with Long as a passenger when she was stopped for a seatbelt violation. Barnes testified that Long attempted to pass her some drugs, but she refused. Officers searched the car and located 4.8 grams of crack cocaine under the passenger seat. Barnes testified that she previously had observed Long cutting up large amounts of drugs, selling drugs, and counting large sums of money. Barnes identified Long as the person on the videotape selling drugs to Rogers, although she was not present in the car at that time.

HELD: The verdict was not against the overwhelming weight of the evidence. Long failed to even assert that the testimony of either Rogers or Barnes contained material inconsistencies, that it was unreasonable in major respects, or that it was impeached.

==>The trial judge did not err in allowing Rogers to testify he had seen Long sell cocaine 15-20

times. The court gave a limiting instruction to require jurors to consider this only to show intent to sell, and this evidence could not be used against Long in the sale of cocaine charge. The court made the proper Rule 403 analysis.

==> There was no *Batson* violation. Long, who is African-American, failed to establish a prima facie case for racial discrimination in the State's peremptory challenges. Although the State was not required to give race neutral reasons, the record reflects race neutral reasons on at least two of four strikes. The trial court's findings were not clearly erroneous.

==>Long's two consecutive life sentences for possession and sale of cocaine as a habitual offender were not disproportionate to the offenses and did not constitute cruel and unusual punishment. "Long's sentence was in the statutory range, it was mandatory, and he has failed to establish that his sentence is grossly disproportionate to his crime."

RANDOLPH, JUSTICE, CONCURRING IN PART AND IN RESULT:

==> "While I agree with the Majority's conclusion that Long's argument is without merit, I find the attending analysis to go unnecessarily beyond Long's lack of a prima facie showing of purposeful discrimination....Under *Batson*, the State was not required to address race-neutral reasons and, therefore, this Court should decline to offer race-neutral reasons not within the record before this Court. Accordingly, I concur in part and in result."

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62226.pdf>

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